

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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KENNETH NIEMER,

Plaintiff,

Case No. 19-cv-627-pp

v.

NANCY BERRYHILL,

Defendant.

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**ORDER GRANTING MOTION FOR LEAVE TO PROCEED WITHOUT  
PREPAYING THE FILING FEE (DKT. NO. 3)**

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The plaintiff has filed a complaint seeking judicial review of a final administrative decision denying his claim for disability insurance benefits under the Social Security Act. Dkt. No. 1. He also filed a motion for leave to proceed without prepaying the filing fee. Dkt. No. 3.

To allow the plaintiff to proceed without paying the filing fee, the court first must decide whether the plaintiff can pay the fee; if not, it must determine whether the lawsuit is frivolous. 28 U.S.C. §§1915(a) and 1915(e)(2)(B)(i).

Based on the facts in the plaintiff's affidavit, the court concludes that he does not have the ability to pay the filing fee. The plaintiff indicates that he is not employed; he is married; and he has two daughters, ages 16 and 17, that he is responsible for supporting. Dkt. No. 3 at 1. The plaintiff states that he receives \$1,709 per month from long term disability payments, and his spouse's monthly wages are \$1,952, for a total of \$3,661 per month. Id. at 2.

Against this income, the plaintiff lists \$4,117.14 in monthly expenses (\$611.14 for a mortgage payment, \$145 for credit card payment(s), and \$3,361 in other household expenses). Id. While the plaintiff has not itemized his approximately \$3,300 in monthly household expenses, and the court is somewhat perplexed about how he and his family are living when he indicates that they're spending approximately \$450 more than they're making each month, the court will accept as true the income and expenses that the plaintiff reports. The plaintiff's property includes two vehicles with a total value of approximately \$8,000, a home worth approximately \$89,000 with no available equity, and \$805 in savings/checking or other bank accounts. The facts as attested by the plaintiff demonstrate that he cannot pay the \$350 filing fee and \$50 administrative fee.

The next step is to determine whether the case is frivolous. A case is frivolous if there is no arguable basis for relief either in law or in fact. Denton v. Hernandez, 504 U.S. 25, 31 (1992) (quoting Nietzke v. Williams, 490 U.S. 319, 325 (1989); Casteel v. Pieschek, 3 Fed. 1050, 1056 (7th Cir. 1993)). A person may obtain district court review of a final decision of the Commissioner of Social Security. 42 U.S.C. §405(g). The district court must uphold the Commissioner's final decision as long as the Commissioner used the correct legal standards and the decision is supported by substantial evidence. See Roddy v. Astrue, 705 F.3d 631, 636 (7th Cir. 2013).

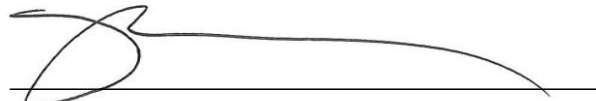
The plaintiff's complaint indicates that he is disabled and that the Commissioner's conclusions and findings of fact when denying benefits to the plaintiff are not supported by substantial evidence and are contrary to law and

regulation. Dkt. No. 1 at 2. At this early stage in the case, and based on the information in the plaintiff's complaint, the court concludes that there may be a basis in law or in fact for the plaintiff's appeal of the Commissioner's decision, and that the appeal may have merit, as defined by 28 U.S.C. §1915(e)(2)(B)(i).

The court **GRANTS** the plaintiff's motion for leave to proceed without prepaying the filing fee. Dkt. No. 3.

Dated in Milwaukee, Wisconsin this 2nd day of May, 2019.

**BY THE COURT:**

A handwritten signature in black ink, appearing to be 'P. Pepper', written over a horizontal line.

**HON. PAMELA PEPPER**  
**United States District Judge**